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JAN 25 2017

***Via Certified Mail –
Return Receipt Requested***

January 19, 2017

Bruce Kuhn - President of the Board
Members of the Board of Directors
Carl D. Stills, Energy Manager
Imperial Irrigation District
333 E. Barioni Boulevard
P.O. Box 937
Imperial, CA 92251

El Centro Generating Station
Attn: Plant Manager / Head of Agency
485 East Villa Road
El Centro, CA 92243

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Kuhn, Member of the Board of Directors, Mr. Stills. Plant Operator/Manager, and Head of Agency,

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring as a result of discharges of contaminated effluent from the El Centro Generating Station ("Facility").

River Watch hereby places the Imperial Irrigation District (the "District"), as owner and operator of the Facility, on notice that following the expiration of 60 days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the District for continuing violations of an effluent standard or limitation, permit condition or requirement, or a Federal or State Order or Permit issued under CWA § 402, 33 U.S.C. § 1342, and the Regional Water Quality Control Board, Colorado River Basin Region, Water Quality Control Plan ("Basin Plan"), as the result of alleged violations of permit conditions or limitations in the District's National Pollutant Discharge Elimination System ("NPDES") Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a), prohibition, such that violation of a permit limit places a discharger in violation of the CWA. River Watch alleges the District violates the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§ 301(a) and 505(a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* CWA § 402(b), 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the District's operations in the region at issue in this Notice is the Regional Water Quality Control Board, Colorado River Basin Region ("RWQCB").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the District with its NPDES permit.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. *The Specific Standard, Limitation, or Order Alleged to Have Been Violated.*

River Watch identifies the District's violations of permit conditions or limitations set forth in RWQCB Order No. R7-2009-0020, as amended by Order No. R7-2014-0005, NPDES Permit No. CA0104248 ("*Waste Discharge Requirements for the Imperial Irrigation District, El Centro Generating Station*") ("the NPDES Permit"). A violation of the NPDES permit is a violation of the CWA.

2. *The Activity Alleged to Constitute a Violation.*

Most often, the NPDES Permit standards and limitations allegedly violated are self-explanatory, and an examination of the language of the NPDES Permit itself is sufficient to inform

the District of its failure to fully comply with the NPDES Permit requirements. This is particularly so since the District is responsible for monitoring its operations to ensure compliance with all permit conditions. River Watch sets forth the following narratives, which identify with particularity the activities alleged to be violations. River Watch does so following a review of public records (e.g., the District's Self-Monitoring Reports ("SMRs") and the California Integrated Water Quality System ("CIWQS") reporting system) relating to operations at the Facility. Additional records and other public documents in the District's possession or otherwise available to the District regarding the NPDES Permit may, upon discovery, reveal additional violations.

River Watch contends that from January 18, 2012 through January 18, 2017, the District violated the Act and the following identified requirements of the NPDES Permit with respect to its effluent discharges. These violations are identified in the District's SMRs by violation number, date of alleged violation, and pollutant. The following prohibitions apply to the District:

A. Exceeding Effluent Limitations for Copper

Copper is one of the most toxic metals to aquatic organisms and ecosystems. Harmful even at low concentrations, copper is detrimental to fish, invertebrates and amphibians. Effects on fish include diminished liver and immune system functioning, and interference with salt regulation which impairs cardiovascular and nervous systems. In birds, exposure to copper can result in reduced growth rates, lowered egg production, and developmental abnormalities. Impacts to human health from copper include gastric disturbances and, in higher doses, damage to the liver and kidneys.

The District has discharged effluent in violation of the following permit conditions:

- Order No. R7-2009-0020, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations, 1. Final Effluent Limitations
- Order No. R7-2014-0005, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations, 1. Final Effluent Limitations

» 124 Effluent Discharges Exceeding the Permit Limit for Total Recoverable Copper

(R7-2009-0020 - 21 exceeding the daily maximum of 52 ug/L; 14 exceeding the daily maximum of .43 lbs/day; 24 exceeding the monthly average of 22 ug/L; 21 exceeding the monthly average of .18 lbs/day)

(R7-2014-0005 - 11 exceeding the daily maximum of 39 ug/L; 11 exceeding the daily maximum of .32 lbs/day; 11 exceeding the monthly average of 20 ug/L; 11 exceeding the monthly average of .17 lbs/day).

B. Exceeding Effluent Limitations for Cyanide

Cyanide is a highly toxic metabolic poison. Fish are the most susceptible organisms to the

toxic potential of cyanide. Significant adverse nonlethal effects to fish include inhibited reproduction, altered growth, and hepatic necrosis.

The District has discharged effluent in violation of the following permit conditions:

- Order No. R7-2009-0020, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations, 1. Final Effluent Limitations
- Order No. R7-2014-0005, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations, 1. Final Effluent Limitations

» **41 Effluent Discharges Exceeding the Permit Limit for Free Available Cyanide**

(R7-2009-0020 - 11 exceeding the daily maximum of 8.5 ug/L; 6 exceeding the daily maximum of .07 lbs/day; 11 exceeding the monthly average of 4.3 ug/L; 8 exceeding the monthly average of .04 lbs/day)

(R7-2014-0005 - 3 exceeding the monthly average of 3.1 ug/L; 2 exceeding the monthly average of .026 lbs/day).

C. Exceeding Effluent Limitations for Bis (2-ethylhexyl) Phthalate

Bis (2-ethylhexyl) phthalate, also known as diethylhexyl phthalate, or di-2-ethylhexyl phthalate (DEHP), is a manufactured chemical often added to plastics to promote flexibility. Phthalates are endocrine disruptors, probable carcinogens in humans, and have the potential to produce adverse developmental, reproductive, neurological, and immune effects in humans, wildlife, and aquatic life. In fish studies, phthalate exposure has impaired the reproductive capacity of males as well as females, and has resulted in intersex fish, which have both male and female characteristics.

The District has discharged effluent in violation of the following permit conditions:

- Order No. R7-2014-0005, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations, 1. Final Effluent Limitations

» **11 Effluent Discharges Exceeding the Permit Limit for Bis (2-ethylhexyl) Phthalate**
(3 exceeding the daily maximum of 12 ug/L; 2 exceeding the daily maximum of .10 lbs/day; 4 exceeding the monthly average of 5.9 ug/L; 2 exceeding the monthly average of .049 lbs/day)

D. Exceeding Effluent Limitations for Zinc

Zinc has adverse effects on many types of aquatic plants and animals, affecting growth, survival, and reproduction. Macroinvertebrates are particularly vulnerable to zinc toxicity, as are fish.

The District has discharged effluent in violation of the following permit conditions:

- Order No. R7-2014-0005, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations, 1. Final Effluent Limitations
 - » 3 Effluent Discharges Exceeding the Permit Limit for Total Recoverable Zinc (1 exceeding the daily maximum of 304 ug/L; 2 exceeding the monthly average of 151 ug/L)
- E. Exceeding Effluent Limitations for Total Suspended Solids

Total suspended solids are particulates of varied origin that are suspended in a moving body of water and do not pass through a filter. Solid particles can disrupt aquatic ecosystems in many ways, including smothering fish eggs, clogging gills, and lowering resistance to disease.

The District has discharged effluent in violation of the following permit conditions:

- Order No. R7-2014-0005, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations, 1. Final Effluent Limitations
 - » 1 Effluent Discharge Exceeding the Permit Limit for Total Suspended Solids (1 exceeding the monthly average of 30 mg/L)
- F. Exceeding Permit Limitations for Chronic Toxicity

The District acknowledges that copper is a likely cause of effluent toxicity. Copper induces negative effects to fish and macroinvertebrates in various body systems across multiple life stages.

The District has discharged effluent in violation of the following permit conditions:

- Order No. R7-2014-0005, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations, 1. Final Effluent Limitations
 - » 3 Chronic Toxicity results exceeding 1.6 TUc (green algae growth test)
- G. Receiving Water Limitations

Receiving water limitations are based on water quality objectives ("WQOs") contained in the Basin Plan, consistent with the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* and are a required part of the NPDES Permit. The NPDES Permit prohibits the District from causing a violation of the receiving water limitations identified in Section V.A. of the NPDES Permit.

It is the District's burden to prove compliance with this section of the NPDES Permit. While the District does conduct receiving water monitoring, various chemicals are added to effluent at the Facility including sulfuric acid and sodium hypochlorite, known to be toxic to aquatic life. Also added to wastewater at the Facility are various chemicals, including biocides

and dispersants. River Watch believes some of these chemicals have not been sufficiently tested and have the potential to contribute to toxicity and nuisance conditions in receiving waters. River Watch is understandably concerned regarding the cumulative effects of potentially unregulated, insufficiently tested, and unmonitored discharges to Central Drain No. 5, the Alamo River, and the Salton Sea.

The Salton Sea and surrounding wetlands comprise a valuable ecosystem, and a vital nesting and stopover site for birds along the Pacific Flyway, hosting more than 400 species of birds a year. Over the last century, 90 percent of the wetlands along the Pacific Flyway have been eliminated, increasing the significance of those which remain. The Sonny Bono Salton Sea National Wildlife Refuge provides habitat for hundreds of birds and wetland species, some of which are listed as endangered or sensitive, such as the Yuma clapper rail, California brown pelican, and eared grebe. Copper and zinc are considered contaminants of potential concern for the Yuma clapper rail. The Salton Sea is home to one of the few remaining natural populations of the endangered desert pupfish.

3. *The Person or Persons Responsible for the Alleged Violations.*

The entity responsible for the alleged violations identified in this Notice is the Imperial Irrigation District, as owner and operator of the Facility, as well as those of the District's employees responsible for compliance with the NPDES Permit and the CWA.

4. *The Location of the Alleged Violation.*

The District is a publicly owned utility which provides electric power, irrigation water, and farm drainage services to customers in Imperial County and parts of Riverside and San Diego Counties. The District owns and operates the Facility -El Centro Generating Station - a gas and oil fired power plant located at 485 East Villa Road in El Centro, California. The Facility consists of three steam turbine and three gas turbine generators, with a total capacity of 346 megawatts, and provides immediate and base load electrical power to the Imperial Valley.

All units are cooled using water circulated through unit-specific cooling towers. The Facility uses water from the Colorado River via the Dogwood Canal for cooling and other operations. Cooling tower supply water is treated with a number of chemicals, including corrosion inhibitors, dispersants, and biological control agents. Chlorination is used as an oxidizing biocide, and sulfuric acid is added to maintain pH balance. The Facility has the capacity to discharge up to 0.995 million gallons per day of industrial cooling water to Central Drain No. 5, within the Brawley Hydrologic Area of the Imperial Hydrologic Unit. Discharge Point No. 001 is located at 32° 48' 14.7" N Latitude; 115° 32' 39.2" W Longitude. Central Drain No. 5 flows into the Alamo River and then to the Salton Sea – all waters of the United States.

The District has constructed two Class I, non-hazardous wastewater deep underground injection wells for disposal of wastewater. However, the injection well system was not performing as expected upon initial operation in May of 2013, and has had ongoing problems. During some months the District discharges to the injection wells only, yet effluent discharges to Central Drain No. 5 have continued.

5. *The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred.*

The range of dates covered by this Notice is from January 18, 2012 to January 18, 2017. River Watch may from time to time update this Notice to include all violations of the CWA by the District which occur during and after this period. Some violations are continuous, and therefore each day constitutes a violation.

6. *The Full Name, Address, and Telephone Number of the Person Giving Notice.*

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Service Code § 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 S. Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to counsel identified below:

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RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with District Staff to tailor remedial measures to the specific operation of the Facility.

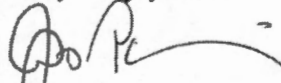
CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and/or recreate in the affected communities identified herein. Members of River Watch may use the affected watersheds for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use, and enjoyment of this natural resource are specifically impaired by the District's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500.00 per day/per violation for all violations pursuant to CWA §§ 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of the CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day "notice period"** to promote resolution of disputes. River Watch strongly encourages the District to contact counsel for River Watch within **20 days** after receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the District is in compliance with the strict terms and conditions of the NPDES Permit and the CWA, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,



Jack Silver

JS:lhnm

Service List

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U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

✓ Regional Administrator
U.S. Environmental Protection Agency, Region 9
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Executive Director
State Water Resources Control Board
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